IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 896 of 2007
To
FIRST APPEAL No. 907 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE J.M.PANCHAL

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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SPL.LAQ OFFICER - Appellant
Versus
NIRANJANABEN ZAVERBHAI & ORS. - Respondents

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Appearance :
MR SS SHAH GP for Appellant in FA Nos.896 to 901 of 2007 ***AND***
MS MINI NIAR AGP for Appellant in FA Nos.902 to 907 of 2007
MR AJ PATEL for Original Claimants.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

Date : 02/04/2007

ORAL JUDGMENT

What is challenged in these appeals filed under Section 54 of the Land Acquisition Act, 1894 ("the Act" for short) read with Section 96 of the Code of Civil Procedure, 1908, is the legality of

common judgment and award dated August 25, 2004 rendered by the learned Civil Judge (S.D.), Bharuch, in Land Acquisition Reference Nos.1462 of 1997 to 1473 of 1997 by which the claimants have been awarded additional amount of compensation at the rate of Rs.40.90 Paise per square metre for their acquired lands over and above compensation awarded to them by the Special Land Acquisition Officer at the rate of Rs.2.10 Paise per square metre by his award dated July 17, 1995.

2. A proposal was made by the Executive Engineer, Narmada Yojana, Canal Distribution Division No.34, Bharuch, to the State government to acquire agricultural lands of Village Saran, Taluka: Vagra, District: Bharuch, for the public purpose of Saran Minor Canal under Narmada Project. On perusal of the said proposal, the Government was satisfied that the lands of Village Saran mentioned in the said proposal were likely to be needed for the said public purpose. Therefore, a notification under Section 4 of the Act was issued, which was published in the official gazette on October 8, 1993. Thereafter, necessary

inquiry under Section 5 of the Act was made and a report, as contemplated by Section 5-A(2) of the Act, was forwarded by the Special Land Acquisition Officer to the State Government. On scrutiny of the said report, the State Government was satisfied that the lands of Village: Saran specified in the notification published under Section 4 of the Act were needed for the public purpose of construction of Canal under Narmada Project. Therefore, a declaration under Section 6 of the Act was made, which was published in the official gazette on September 28, 1994. The interested persons were thereafter served with the notices for determination of compensation payable to them. Accordingly, the claimants appeared before the Special Land Acquisition Officer and claimed the compensation at the rate of Rs.50/- per square metre. However, having regard to the materials placed before him, the Special Land Acquisition Officer by his award dated July 17, 1995, offered compensation to the claimants at the rate of Rs.2.10 Paise per square metre. The claimants were of the opinion that the offer of compensation made to them was totally inadequate. Therefore, they submitted applications

under Section 18 of the Act requiring the Special Land Acquisition Officer to refer to their cases to the Court for the purpose of determination of just amount of compensation payable to them. Accordingly, the references were made to the District Court, Bharuch, where they were numbered as Land Acquisition Reference Nos.1462 of 1997 to 1473 of 1997.

3. On behalf of the claimants, four witnesses were examined. They were: (1) Ibrahim Bapusaheb at Exhibit 29; (2) Mahendrabhai Nanubhai Nanavati at Exhibit 33; (3) Sanjaykumar Krishnakant Patel at Exhibit 35; and, (4) Hanumanbhai Ishwarbhai Patel at Exhibit 38.

3.1 Witness Ibrahimbhai Bapusaheb examined at Exhibit 29 claimed enhanced compensation on yield basis as well as on the basis of the previous award of the Reference Court relating to the lands of Village: Vagra, which was produced at Exhibit 24. As far as previous award of the Reference Court relating to the lands of Village: Vagra is concerned, it was mentioned by the said witness that the lands of

Village: Vagra were acquired for the public purpose of ONGC pursuant to the notification issued under Section 4(1) of the Act, which was published in the official gazette on April 28, 1989. The witness also mentioned that the Special Land Acquisition Officer in those cases had awarded compensation to the claimants at the rate of Rs.7/- per square metre, but in references, the Reference Court awarded compensation to the claimants at the rate of Rs.38/- per square metre. It was claimed by the said witness that the lands of Village Vagra, which were acquired earlier, were similar in all respects to the lands acquired in the instant cases including fertility and were situated quite near to each other.

3.2 Though this witness was cross-examined by the learned counsel for the acquiring bodies, the assertion made by the witness that the lands which were acquired previously from Village: Vagra were similar in all respects to the lands acquired in the instant cases, was not disputed at all and was allowed to go unchallenged.

3.3 It may be mentioned that no witness was examined on behalf of the Acquiring Authorities.

4. On the basis of the evidence adduced by the claimants, the Reference Court was of the opinion that on the yield basis as well as on the basis of the previous award of the Reference Court relating to the lands of Village: Vagra, the claimants were entitled to additional amount of compensation at the rate of Rs.40.90 Paise per square metre and awarded additional amount of compensation at the rate of Rs.40.90 Paise per square metre, by the impugned award giving rise to the instant appeals.

5. This Court has heard Ms.Mini Niar, learned Assistant Government Pleader for the appellant, and Mr.A.J.Patel, learned counsel for the original claimant(s) in each appeal, at length and in great detail. This Court has also considered the paper-book supplied by the learned counsel for the claimants, which includes oral as well as documentary evidence adduced by the parties before the Reference Court.

6. In ***Special Land Acquisition, Davangere vs. P.Veerabhadarappa, etc. etc., AIR 1984 SC 774,*** it is laid down that the function of the Court in awarding compensation under the Act is to ascertain the market value of land at the date of the notification under Section 4(1) and the methods of valuation may be: (1) opinion of experts; (2) the prices paid within a reasonable time in *bona fide* transaction of purchase or sale of the lands acquired or of the lands adjacent to those acquired and possessing similar advantages; and (3) a number of years' purchase of the actual or immediately prospective profits of the lands acquired. What is emphasised in the said decision is that normally, the method of capitalizing the actual or immediately prospective profits or the rent of a number of years' purchase should not be resorted to if there is evidence of comparable sales or other evidence for computation of the market value. For the guidance of courts in the country, it is laid down that yield method can be resorted to only when no other method is available. Applying the principles laid down in the above quoted decision to the facts of the present case, this Court finds that

the Reference Court was not justified in determining the market value of the lands acquired on yield basis more particularly when the evidence in the form of previous award of the Reference Court relating to the lands of Village: Vagra was available on record. The previous award of the Reference Court relating to the lands of Village: Vagra is produced by the claimants at Exhibit 24. It indicates that the lands of Village: Vagra were acquired for public purpose of ONGC Project pursuant to publication of notification issued under Section 4 of the Act in the official gazette on April 28, 1989. Therein, the Special Land Acquisition Officer had awarded compensation to the claimants at the rate of Rs.7/- per square metre. Feeling aggrieved, the claimants had sought references and accordingly, the references were made to the District Court, Bharuch, where they were numbered as L.A.R.Nos.1282 of 1990 to 1291 of 1990. In those cases, witness Musabhai Umarji Patel was examined at Exhibit 96 whereas another witness Hanumanbhai Ishwarbhai Patel was examined at Exhibit 103 and witness Omprakash Dahyabhai Pandya was examined at Exhibit 109. Further, the claimants had

also examined Raisang Babubhai Makwana at Exhibit 118 and witness Ramanbhai Pujabhai Vankar was examined at Exhibit 125. On behalf of the Acquiring Authorities, witness Harishchandra Kanaiyalal Shah was examined at Exhibit 131 and witness Parsottambhai Haribhai Chotaliya was examined at Exhibit 135. On appreciation of the evidence adduced by the parties, the Reference Court by judgment and award dated January 10, 2002 awarded additional amount of compensation to the claimants at the rate of Rs.31/- per square metre. Thus, those claimants were awarded compensation at the rate of Rs.38/- per square metre.

7. As observed earlier, it was asserted by witness Ibrahim Bapusaheb that the lands of Village: Vagra and the lands acquired in the instant cases were situated near each other. It was also claimed by him that the lands acquired from Village Vagra were similar in all respects to the lands acquired in the instant case. This assertion was neither challenged by the Acquiring Authorities nor proved to be untrue. Under the circumstances, this Court is of the opinion that the previous award of the Reference Court

relating to the lands of Village: Vagra would furnish good guidance for the purpose of determining the market value of the lands acquired in the instant cases from Village: Saran. It is well settled that the previous award of the Reference Court relating to the lands of a village, which has attained finality, can be taken into consideration as a good guidance for the purpose of determining the market value of similar lands acquired subsequently from the adjoining village. The record further shows that the previous award of the Reference Court relating to the lands of Village: Vagra, which was rendered in Land Reference Case Nos.1282 to 1291 of 1990, was subjected to challenge in First Appeal Nos.1942 to 1951 of 2003 and cognate matters and that the High Court by judgment dated June 19, 2006 upheld the same. The fact that the previous award of the Reference Court relating to the lands of Village: Vagra has attained finality cannot be disputed by the learned counsel for the appellant. Therefore, the claimants were justified in placing reliance upon the same for the purpose of claiming enhanced compensation. There is a general consensus between

the learned counsels for the parties that on the basis of the previous award relating to the lands of Village: Vagra, as confirmed by the High Court, the claimants would be entitled to compensation, in all, at the rate of Rs.43/- per square metre. Thus, this Court does not find any merits in the appeals and, therefore, the appeals are liable to be dismissed.

8. For the foregoing reasons, all the appeals fail and are dismissed. There shall be no orders as to costs. The Registry is directed to draw decree in terms of this judgment immediately.

(J. M. Panchal, J.)

Rajendra